

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

WINE & CANVAS DEVELOPMENT LLC,)	
)	
Plaintiff,)	
)	
vs.)	
)	
THEODORE WEISSER,)	
CHRISTOPHER MUYLLE,)	No. 1:11-cv-01598-TWP-DKL
YN CANVAS CA, LLC doing business as)	
WWW.ART-UNCORKED.COM; doing)	
business as ART UNCORKED,)	
WEISSER MANAGEMENT GROUP, LLC,)	
)	
Defendants.)	

REPORT AND RECOMMENDATION

This matter is before the Court on the *Second Verified Motion for Rule to Show Cause, To Compel and For Sanctions, Including Dismissal of Claims and For Default Judgment* filed by Plaintiff Wine & Canvas Development LLC. [Dkt. 125.] The Honorable Tanya Walton Pratt, District Judge, designated this Magistrate Judge, under Fed. R. Civ. P. 72 and 28 U.S.C. § 636(b)(1), to issue a report and recommendation on the request. [Dkt. 142.] For the reasons set forth below, the undersigned recommends the Motion be **DENIED**.

Plaintiff seeks various sanctions against Defendants Theodore Weisser, Weisser Management Group, LLC and YNCANVAS CA, LLC d/b/a/ ART UNCORKED (collectively "Weisser") for failing to attend depositions in January of 2013. [Dkt. 125 at 2.] Plaintiff recites the sequence of events that occurred leading up to the depositions,

which prompted Plaintiff to file a Motion to Compel in March of 2013. [Dkt. 84.] The Court granted Plaintiff's Motion to Compel (but declined to issue sanctions) in May of 2013. [Dkt. 92.] Plaintiff asserts Defendant Weisser has since ignored Plaintiff's attempts to reschedule the deposition and asks the Court to sanction Weisser for failing to attend the "scheduled depositions." [Dkt. 125 at 7.]

The Court cannot grant the relief Plaintiff requests. Plaintiff may have attempted to reschedule Defendant Weisser's deposition; however, it does not appear there ever was a new deposition date. The Court already granted Plaintiff's Motion to Compel concerning the January deposition date. The Court cannot sanction Defendant Weisser for failing to attend a second deposition that was not actually scheduled. However, when Defendant Weisser failed to cooperate with Plaintiff in scheduling the deposition, he also failed to comply with the Court's order to do so in Dkt. 92. As a party to this litigation, Weisser cannot avoid the discovery process simply by ignoring Plaintiff's requests. Plaintiff shall now serve a Notice of Deposition to Defendant Weisser, with proper notice as required by Local Rule 30-1, to schedule a deposition at a time and place convenient to Plaintiff. The Court advises Defendant Weisser that failure to appear for deposition could lead to sanctions, including a default judgment.


Therefore, the undersigned recommends the *Second Verified Motion for Rule to Show Cause, To Compel and For Sanctions, Including Dismissal of Claims and For Default Judgment* be **DENIED** [Dkt. 125] and that Plaintiff serve a Notice of Deposition to Defendant Weisser consistent with this Order.

Notice Regarding Objections

Within fourteen (14) days of being served with a copy of this recommendation, either party may serve and file specific written objections thereto. 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b)(2). A district judge shall make a *de novo* determination of those portions of the recommendation to which objections are made. 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b)(3). If objections are filed, the opposing party may serve a response within fourteen (14) days of the date the objections are filed. The objecting party shall then have seven (7) days to reply, if desired.

Failure to file an objection might result in forfeiture of the right to *de novo* determination by a district judge and to review by the court of appeals of any portion of the recommendation to which an objection was not filed. *Tumminaro v. Astrue*, 671 F.3d 629, 633 (7th Cir. 2011); *United States v. Pineda-Buenaventura*, 622 F.3d 761, 777 (7th Cir. 2010); *Schur v. L. A. Weight Loss Centers, Inc.*, 577 F.3d 752, 761 n. 7 (7th Cir. 2009); *Kruger v. Apfel*, 214 F.3d 784, 787 (7th Cir. 2000); *Johnson v. Zema Systems Corp.*, 170 F.3d 734, 739 (7th Cir. 1999).

Date: 11/13/2013



Denise K. LaRue
United States Magistrate Judge
Southern District of Indiana

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